

SERVED: April 15, 2004

NTSB Order No. EM-198

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 14th day of April, 2004

_____	)	
THOMAS H. COLLINS,	)	
Commandant,	)	
United States Coast Guard,	)	
	)	
v.	)	Docket ME-175
	)	
ANTHONY PASSARO,	)	
	)	
Appellant.	)	
_____	)	

**OPINION AND ORDER**

Appellant, *pro se*, seeks review of a decision of the Vice Commandant (Appeal No. 2640, dated August 31, 2003) affirming a decision and order entered by Coast Guard Administrative Law Judge Parlen L. McKenna on March 19, 2002, following an evidentiary hearing that concluded on November 20, 2001.<sup>1</sup> The law judge sustained a charge of misconduct and ordered that the appellant's Merchant Mariner's License (No. 954670) and Merchant Mariner's Document (056-44-2478), and all other licenses and documents held by him, be suspended for twelve months, six months

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<sup>1</sup>Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

outright and six months remitted on twelve months' probation. As we find no valid basis in appellant's appeal brief for overturning the Vice Commandant's affirmance of the law judge's decision, appellant's appeal, to which the Coast Guard filed a reply in opposition, will be denied.

The misconduct charge at issue in this proceeding arose from the appellant's employment aboard the M/V LIBERTY WAVE as a duty engineer on February 8, 2001. Appellant was alleged to have twice responded to high water alarms by pumping bilge water directly overboard without first passing it through an oily water separator, contrary to the Vessel Instruction Manual and a standing order of the vessel's Chief Engineer. Although the respondent admitted the allegations in support of the misconduct charge, he asserted that he had been ordered to respond as he did by the first assistant engineer. The law judge did not give weight to this account of the matter, largely on credibility grounds, and credited instead testimony to the effect that appellant had been instructed to pump ballast or clean ocean water from the duct keel directly over the side, not potentially dirty (i.e., oil containing) bilge water.

Aside from demonstrating his disagreement with the Vice Commandant's rejection of his numerous objections to the law judge's decision and order,<sup>2</sup> appellant's brief identifies no

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<sup>2</sup>The appellant's brief contains many extraneous and irrelevant arguments. For example, he submits that the Coast Guard did not adequately investigate the case or understand the technical issues it presented. Assuming, for purposes of argument that the Board could properly look into questions of

legal basis for overturning it.<sup>3</sup> Without some detailed explanation of the grounds for appellant's belief that the Vice Commandant's affirmance of the law judge's rulings on any and all substantial factual or legal objections is contrary, in a significant respect, to the record or controlling law, we are constrained to accept the Coast Guard's disposition.<sup>4</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The appellant's appeal is denied; and
2. The Vice Commandant's decision affirming the law judge's decision and order is affirmed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

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that nature, the fact is that appellant admitted the specifications underlying the charge. He cannot now attack their validity.

<sup>3</sup>Appellant's assertion that misconduct was not proved because he was not shown to have wrongful intent is unavailing. This is not a criminal case, so there was no need to establish the element of scienter. More to the point, Coast Guard regulations (46 C.F.R. § 5.27) define "misconduct" and appellant's admitted actions clearly fall within the definition:

*Misconduct* is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

<sup>4</sup>Statements such as "[t]here are far too many statements of error of law and abuse of discretion asserted in the Commandant's decision to list individually" do not discharge an appellant's duty to specifically enumerate how, in his or her view, the Vice Commandant abused his discretion or erred as a matter of law. See Rule 825.20(5) and (6), 49 C.F.R. Part 825. An appeal to the Board does not trigger a plenary review; it initiates a mariner's opportunity to tell us, with particularity, why he believes the Vice Commandant made a mistake.